

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Don Kehoe,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1168
Parcel No. 090/02259-000-000

On March 4, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Don Kehoe was self-represented and submitted evidence in support of his petition. The Polk County Board of Review designated Assistant County Attorney Ralph E. Marasco, Jr. as its legal representative. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Don Kehoe, owner of property located at 665 Harwood Drive, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. The real estate was classified residential for the January 1, 2009, assessment and valued at \$377,800; representing \$66,500 in land value and \$311,300 in the improvement value. Kehoe protested to the Board of Review on the grounds that 1) the property assessment was not equitable as compared with assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a), and 2) the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b).

Kehoe claimed the property was over-assessed and \$256,921 was its actual and fair assessment. The Board of Review granted the petition stating, "The assessed value of the property was changed

because it was not equitable with similar property in the area.” The assessment was reduced to a total value of \$347,800, allocated \$66,500 to the land value and \$281,300 in dwelling value. Kehoe then appealed to this Board on the ground of equity and asserted the new assessed value should be \$250,000.

According to the property record card, the subject property is a two-story stucco dwelling built in 1915 with 1275 square feet of main living area and 1264 square feet of upper living area. It also has a 1064 square-foot basement, of which 300 square feet is finished, and a detached garage. The property has a grade classification of 2-10 and is in very good condition. This site consists of 0.551 acres.

Kehoe submitted evidence regarding assessed values of twenty-one of the properties nearest to his residence. The data indicated it reflected assessed values of the properties after any Board of Review action. Kehoe’s summary showed an average assessed value of \$98.43 per square foot. This Board notes that no adjustments were made for different amenities.

The subject property is assessed at \$148 per square foot, which is \$36 per square foot higher than the next closest property at \$112 per square foot. Kehoe believes his property should be assessed at the average dollar per square foot of \$98.43, which would result in an assessed value of \$249,914 (2539 square foot x \$98.43).

The Board of Review introduced evidence of an independent appraisal conducted by Norman (Mike) Swaim. Swaim testified regarding the appraisal process. Swaim’s final reconciliation of value for the subject property was \$375,000 as of the January 1, 2009, assessment date. It also submitted the financing appraisal for Kehoe’s purchase of the property; however, we do not consider this appraisal probative evidence of the January 1, 2009, assessment date because it reflected a valuation date of November 2005.

Deputy Assessor Paul Humble testified to evidence submitted regarding a sales ratio study for the subject property's neighborhood (exhibit E). This Board finds the sales ratio study has no bearing on this equity claim. The ratio study had very limited information, made no reference to the type of structure (i.e. one-story versus two-story), nor made any adjustments to the subject property to account for differences between it and others in the neighborhood.

Reviewing all the evidence, we find that the assessed value information submitted by the appellant was unadjusted and did not prove the January 1, 2009, assessment is inequitable. We find the appraisal submitted by the Board of Review supports the assessment of the subject property.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. Iowa Code § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value

established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available or market value "cannot be readily established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).


To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860,865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The gist of this test is the ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). The properties submitted cannot be used as comparable to challenge the assessment on inequity because Kehoe's data was not adjusted to the subject property. To be comparable the properties must be "similar." *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009). This does not mean the properties must be identical, but they should have a resemblance. *Id.* (citations omitted).

Kehoe did not claim that the property was assessed for more than authorized by law before this Board.

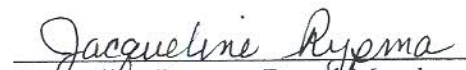
We, therefore, affirm the assessment of the Kehoe property as determined by the Board or Review. The Appeal Board determined that the property assessment value as of January 1,2009, is \$347,800; representing \$66,500 in land value and \$281,300 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the
Polk County Board of Review is affirmed.

Dated this 16 day of April, 2010.


Richard Stradley, Presiding Officer


Karen Oberman, Board Chair


Jacqueline Rypma, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>4.16</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	